BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SEAN J., Claimant, vs. KERN REGIONAL CENTER, Service Agency.	OAH No. 2011091036

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings on February 29, 2012, in Tehachapi, California.

Sean J., claimant, was represented by his mother, Hilary J. Kern Regional Center (Service Agency) was represented by Susan Hernandez, LCSW, Special Projects Manager for Kern Regional Center.

Evidence was received and the matter was submitted.

ISSUE

Is claimant eligible for regional center services based on his contention that he suffers from Autism.

FACTUAL FINDINGS

1. Claimant is a 17-year-old boy who is requesting eligibility for regional center services based on Autism.

2. Claimant has been receiving mental health services for some time and has been prescribed medication, including Risperdal and other medications. Claimant's psychiatrist diagnosed claimant with Asperger's Disorder and Attention Deficit Hyperactivity Disorder.

3. The Service Agency determined that claimant is not eligible for regional center services because he does not suffer from autism, mental retardation, or any other disability set forth in Welfare and Institutions Code section 4512. Based on the above determination, the Service Agency denied services to claimant under the Lanterman Act. Claimant filed a request for a hearing and this matter ensued.

4. The Kern Regional Center denied claimant's application for eligibility based, in part, on a psychological evaluation performed by Allison Little, Ph.D. The evaluation was performed on June 10, and July 8, 2011. Dr. Little observed claimant to make adequate eye contact and noted that claimant's speech was logical and goal directed, although somewhat stilted and lacking in normal inflection. Further, claimant's affect was flat and for the most part unchanging with the exception of an occasional smile. Dr. Little administered a number of tests including a Mental Status Examination, Behavioral Observation, Wechsler Abbreviated Scale of Intelligence (WASI), Wide Range Achievement Test, Revision 3 (WRAT 3), Autism Diagnostic Observation Schedule – Module 3 (ADOS); Gilliam Asperger's Disorder Scale, Gilliam Autism Rating Scale (GARS), and the Vineland Adaptive Behavior Scales. Dr. Little found the following:

(a) In administering the WASI, Dr. Little reports claimant had a Full Scale I.Q. score of 86, which is in the low average range. However, Dr. Little found that the score was not a good indicator of intellectual functioning because of the divergence between the verbal and non-verbal skills. Dr. Little opined that claimant's scores suggest a possible learning disorder.

(b) Claimant scored at grade level on the Wide Range Achievement Test, with scores of 95 in spelling, and 100 in arithmetic.

(c) In administering the ADOS, Dr. Little found that claimant scored below the Autism Spectrum cutoff score of seven and well below the Autism cutoff score of 10. Dr. Little stated in her report that "[claimant's] communication was age appropriate. He did not utter stereotyped or idiosyncratic words or phrases and was able to engage in age appropriate social conversation. . . . The client made good eye contact with undersigned and was able to use appropriate facial expressions that were communicative. The client appeared to enjoy the interaction with the undersigned and was able to communicate a clear understanding and shared emotion with others for several different emotions . . . The client was able to describe insight into several typical social relationships including his own role in these relationships. . . . The overall quality of rapport established was comfortable throughout the assessment. The client revealed age appropriate imagination and creativity. He did not describe any excessive interest

or referencing to any unusual or highly specific topics. He did not engage in repetitive behaviors, compulsions or rituals, nor self injurious behaviors. There were no unusual or repetitive movements or posturing of his hands and fingers."

(d) The GARS was based on mother's reporting of claimant's behaviors and Dr. Little's personal observations. Mother reported that claimant engages in stereotyped behaviors such as licking fingers, hands and inedible objects; whirling or turning in circles; rocking back and forth while sitting or standing; and making high pitched sounds. Regarding communication and social interaction, mother reported that claimant speaks with flat affected tone or with dis-rhythmic patterns; responds inappropriately to simple commands; resists physical contact; behaves in an unreasonably frightened manner; laughs or cries inappropriately; does certain things repetitively or ritualistically; becomes upset when routine is changed; lines up objects in precise orderly fashions, and becomes upset when the order is disturbed.

(e) The GADS was based on a combination of mother reporting and Dr. Little's personal observations. Regarding social interaction, the report states that claimant: lacks subtlety in expression of emotion (e.g. shows distress of affection out of proportion to the situation); requires specific instructions to perform tasks; expresses feelings of frustration and anger inappropriately; and becomes frustrated quickly when unsure of what is required. Regarding restrictive patters of behavior, the report states that claimant is unaware of and/or insensitive to the needs of others; demonstrates eccentric forms of behavior; has preoccupation with specific subjects or objects that is abnormal in intensity or focus; requires extensive directions from others; and expresses feelings of empathy inappropriately. Regarding claimant's cognitive patterns, the report states that claimant attaches very concrete meanings to words.

(f) The Vineland assesses adaptive behavior in four domains: communication, daily living skills, socialization, and motor skills. The scores were based on mother's reporting of claimant's skills in these areas. Based on mother's reporting, claimant scored in the low range in all four areas. In fact, claimant's Adaptive Behavior Composite score was 59, which is less than the scores of the lower one percentile of similarly aged individuals in the Vineland-II sample. For example, claimant's receptive communication skills were at an age equivalent level of three years, seven months; expressive communication skills were at the five-year level; personal daily living skills were at the four-year, seven-month level; and domestic daily living skills were at the two-year, 11-month level. In the Socialization domain, claimant's scores were at the five-year, six-month level in interpersonal relations and coping skills were at the four-year, six-month level. Interestingly, claimant's written communication skills and his community daily living skills were at the nine-year, ten-month level, and his socialization play and leisure skills were scored at the 12-year level. Dr. Little noted in her report that claimant's

scores in all areas appeared to be lower than what she observed during the assessment.

5. Dr. Little diagnosed claimant in Axis I with Mood Disorder Not Other Specified; Attention Deficit Hyperactivity Disorder (by history); and Learning Disorder Not Otherwise Specified (rule out). Dr. Little states in the summary of her report, that "[claimant's] mother endorsed several symptoms characteristic of an Autism Spectrum Disorder. Nevertheless, it is the undersigned's opinion that there was insufficient evidence to fully support this diagnosis during today's evaluation. The client did not reveal a qualitative impairment in his social interaction. He was able to use non-verbal behavior to regulate social interaction with me. The client was also able to discuss and provide insight into social relationships and his role in those social relationships. The client stated that he enjoys being around peers, although did acknowledge at times having difficulty with social relationships. Nevertheless, this may be a product of his mood disorder rather than an Autistic Spectrum Disorder. The client did not reveal any repetitive or stereotyped patterns of behaviors, interests or activities during the assessment. Additionally, his communication was age appropriate with the exception of an odd and unusual prosody and little inflection in his speech production."

6. In June 2010 (the end of claimant's 9th grade year), claimant's parent requested that claimant be admitted to the school district's special education program so that claimant could participate in the his high school's "Workability Program." An Individualized Education Program (IEP) meeting was conducted on June 4, 2010. Prior to the IEP, claimant had been in general education. According to the IEP report, claimant performed well in school, earning a B in Spanish, a C+ in Earth Science, a B in Geography, and A+ in PE, a C in Algebra, and an A- in English. His English teacher reported that claimant "has excellent work habits. He is highly organized. He turns in 90% of his work, sometimes late. He has become more social since the beginning of the year, in a good way and is able to speak with peers regarding school work and other subjects. Writing and reading skills are at grade levels but needs a little extra time to read and write responses." Claimant was accepted into the Special Education Program "as a student with Autism, based on a review of assessments.

7. Claimant underwent a Rorschach test on February 2, 2010, which was conducted by John Exner, Ph.D. and Irving Weiner, Ph.D. from the Valley Psychological Group. Drs. Exner and Weiner found that "[claimant] gave evidence of a serious impairment in his ability to think logically and coherently. . . . The extent of his disordered thinking calls for intervention focused on helping him improve the clarity of this thinking. . . . He demonstrates a serious impairment of his reality testing abilities, tending to misperceive events. This significant adaptive liability is likely to result in his frequent failure to anticipate the consequences of his actions and to misconstrue the boundaries of appropriate behavior. This confusion from separating reality from fantasy and the inappropriate behaviors, to which it can lead, appear to constitute a chronic and pervasive source of adjustment difficulties in his life."

8. The evidence also contains an MACI Interpretive Report from the Valley Psychological Group, which states in pertinent part: "The profile of this adolescent suggests that he wishes to flatten his emotions to protect himself from his fearful mistrust of others. His general social awkwardness and hesitation reflect a longstanding effort to keep others, especially peers, at a distance. . . . Peer relationships are a major element of the troubles of this adolescent. He sadly reports strong feelings of peer rejection. . . . Preoccupations with feelings of adequacy and chronic feelings of worthlessness and guilt appear to predominate in a dysthymic syndrome evident in the clinical picture of this socially awkward and introverted teenager. Timid, shy and apprehensive, he is especially sensitive to public humiliation and rejection. . . . Fearful of expressing his discontent to peers because they may reject or humiliate him, he deals with his frustrations by turning them inward." The MACI report noted diagnoses of Asperger's Disorder and Mood Disorder.

9. On January 20, and February 18, 2003, claimant was evaluated by School Psychologist Michelle Cortichiato. Ms. Cortichiato found that claimant's abilities on verbal tasks were within the low average range, while his non-verbal abilities were in the high average range. No areas of processing deficit were identified. His academic performance fell within the broad average range in reading and comprehension, numerical operations, math reasoning, spelling, and listening comprehension. His performance on pseudo work tasks fell above the broad average range. Claimant's demonstrated difficulty on the oral expression subtest.

10. On October 21, 2011, claimant was assessed by David Seymour, MFT. Claimant was referred to Mr. Seymour by the school psychologist. During the assessment, claimant was cooperative but his facial expression was mostly flat and his mood was depressed. Mr. Seymour testified that in previous assessments, the evaluators, including Dr. Little, discounted claimant's mother's reporting of claimant's behaviors because claimant does not exhibit these behaviors consistently outside the home. Mr. Seymour testified that he did not observe all of the behaviors that claimant's mother reported to Dr. Little during the GADS and GARS assessments.

11. Based on his observations and on the reporting of claimant's mother, Mr. Seymour diagnosed claimant with autism because claimant met the criteria set forth in the DSM IV Manual of Mental Disorders. Mr. Seymour noted in his Assessment Summary that claimant exhibited the following symptoms: failure to develop peer relationships appropriate to developmental level, meeting criterion (A)(1)(b); lack of social or emotional reciprocity, meeting criterion A(1)(d); delay in, or total lack of, the development of the spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gestures or mime), meeting criterion A(2)(a); in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, meeting criterion A(2)(b); encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, meeting criterion A(3)(a); apparently inflexible adherence to specific, nonfunctional routines or rituals, meeting criterion A(3)(b); and delays or abnormal functioning prior to age three years in (1) social interaction and (2) language as used in social communication, meeting criterion B.

12. Claimant's mother testified at the hearing that claimant exhibits numerous symptoms associated with Autism on a daily basis. She stated that claimant lacks the ability to maintain friendships even though he is desperate to make friends, speaks in flat tone, doesn't towel-dry after showering because he doesn't like the feeling of a towel, doesn't brush his teeth, doesn't wash his face if he doesn't have the right kind of soap, and has melt-downs before school if he is late. Claimant also is obsessed about song titles, tattoos, and poems. He has an unreasonable fear of using the microwave or the oven so he won't prepare his own food. He won't share food even if the food is prepared for the family. He doesn't like different foods on his plate to touch and uses different utensils for different meal courses. He engages in obsessive or ritualistic behavior such as stacking objects. He is fearful of fire but doesn't understand the danger of placing clothes near an electric heater. He talks to himself while looking in the mirror. He watches television programs that are made for much younger children and believes the characters in these programs are real. He is obsessed with video games that are designed for six-year-olds, and he reacts violently when objects are taken away from him.

DISCUSSION

13. Claimant has behavior problems, socialization problems, and adaptive functioning problems. However, there seems to be a marked difference in how claimant behaves at home compared to how he behaves outside the home. He does not exhibit the symptoms associated with Autism outside the home. Further, school records indicate that he does rather well in his classes. For example, he earned an A- in English and received a complimentary assessment from his English teacher who touted claimant's organizational skills and indicated that claimant had become more social and was able to speak with peers regarding school work and other subjects. His performance in school is not consistent with the description of the substantial delays reported by his mother to Dr. Little during the Vineland test. Further, there was no evidence presented that the stereotypical or ritualistic behaviors reported by claimant's mother to Dr. Little and Mr. Seymour have been observed by other mental health professionals or teachers in the past.

LEGAL CONCLUSIONS

1. The evidence did not establish that claimant has Autism. Therefore, claimant is not eligible for regional center services under Welfare and Institutions Code section 4512, subdivision (a), based on this condition.

2. California Code of Regulations, title 17, section 54000 defines "developmental disability" as a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or other conditions closely related to mental retardation, or that require treatment similar to that required for individuals with mentally retardation. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial disability.

3. For Claimant to be eligible for regional center services, it must be determined that he suffers from a developmental disability. That disability must fit into one of the eligibility categories mentioned in California Code of Regulations, title 17, section 54000, and must not be solely from an excluded condition. Excluded conditions are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical.

4. The evidence in this case established that claimant has delays in social interaction and adaptive functioning. However, it was not established that these delays have been caused by Autism.

ORDER

The Kern Regional Center's determination that claimant is not eligible for regional center services is affirmed. Claimant's appeal of that determination is denied.

DATED: March 13, 2012

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HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.